

SEC. 10-1.3300 VARIANCE

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SEC. 10-1.3305 PURPOSE.

The purpose of variance provisions is to authorize in specific cases departure from the terms of the Ordinance if not contrary to the public interest where, owing to special conditions, literal enforcement would result in unnecessary hardship. Unless determined otherwise by the Planning Director as provided for in Section 10-1.2830, the terms of this Zoning Ordinance as it applies to variances shall not apply to reductions in yard requirements which are within 25 percent or to reductions in lot size which are within 10 percent of the applicable standards.

SEC. 10-1.3310 WHEN REQUIRED.

a. **General.**

A variance request to certain development standards of the Zoning Ordinance may only be applied for when a specific standard can not be met and when the required findings as specified in Section 10-1.3325 can be met.

b. **Subdivision.**

When an application includes a request for a variance in conjunction with a subdivision, the project (separately or concurrently) shall be processed and reviewed by both the Planning Commission and the City Council, whose action shall be final.

SEC. 10-1.3315 APPLICATION FORM AND SUBMITTAL.

An application for a variance shall be submitted as specified in Section 10-1.2815.

SEC. 10-1.3320 ADMINISTRATIVE OPTIONS.

Where specified in Section 10-1.2830 the Planning Director may approve, conditionally approve, disapprove, or refer a certain variance applications to the Planning Commission, with or without a recommendation. All other variance applications shall be reviewed by the Planning Commission. Except for referrals, action must be based on the findings listed for approval in Section 10-1.3325.

If after applying for a variance the applicant fails to provide changes or additional information necessary to make a decision on the project and there is no activity taking place in connection with the application for a period of six months, the application shall be closed and the applicant so informed.

SEC. 10-1.3325 FINDINGS.

The approving authority may approve or conditionally approve an application when all of the following findings are made:

- a. There are special circumstances applicable to the property including size, shape, topography, location, or surroundings, or other physical constraints.
- b. Strict application of the Zoning Ordinance deprives such property of privileges enjoyed by other property in the vicinity under the same zoning classification.
- c. The variance does not constitute a grant of a special privilege inconsistent with the limitations upon other properties in the vicinity and zone in which the property is situated.

SEC. 10-1.3330 CONDITIONS.

To safeguard the public interest and attain maximum compatibility with abutting areas, the Planning Director, Planning Commission, or City Council as applicable, may attach to approvals such conditions as it deems necessary.

SEC. 10-1.3335 NOTICE OF DECISION AND EFFECTIVE DATE.

The decision of the Planning Director or decision-making body shall take effect in accord with the provisions of Section 10-1.2825 and notice shall be given pursuant to Section 10-1.2820.

SEC. 10-1.3340 TIME LIMITS FOR FINAL DECISION.

Where applicable, a final decision on all applications for a variance will be made within the time limits set forth in the Permit Streamlining Act of the State of California. A variance application

that is dependent on a General Plan amendment or other legislative proposal shall not be subject to the Permit Streamlining Act's time limits until the General Plan amendment for legislative proposal is adopted.

SEC. 10-1.3345 APPEALS.

a. **Decision of Planning Director Appealed to Planning Commission.**

- (1) The decision of the Planning Director may be appealed to the Planning Commission in accord with the appeals process detailed in Section 10-1.2845.
- (2) The Planning Commission may approve, conditionally approve, or disapprove the application based on the findings in Section 10-1.3325.

b. **Decision of Planning Commission Appealed to City Council.**

- (1) The decision of the Planning Commission may be appealed to the City Council in accord with the appeals process detailed in Section 10-1.2845. The Council may approve or conditionally approve, or disapprove the application based on the findings listed in Section 10-1.3325.
- (2) In the event significant new evidence, which may include substantial changes in the proposal, is presented in conjunction with the appeal, the matter shall be returned to the Planning Commission for further consideration and adoption.

SEC. 10-1.3350 REFERRALS.

- a. The Planning Director may refer a variance application to the Planning Commission at any time, with or without a recommendation. The Planning Commission shall then conduct a public hearing for which notice shall be given in accord with Section 10-1.2820.
- b. On referral, the Planning Commission may approve, conditionally approve, or disapprove the application based on the findings in Section 10-1.3325. The Planning Commission must disapprove the application if it is unable to make any of the required findings.

SEC. 10-1.3355 LAPSE OF APPROVAL.

a. **General.**

Variance approval is void one year after the effective date of approval unless (a) either a building permit has been issued or a building permit application has been submitted for

processing and said application has not expired; or (b) business operations have commenced in accordance with all applicable conditions of approval.

b. **One-Year Extension(s).**

- (1) A maximum of two one-year extensions can be approved by the Planning Director or, on appeal, by the Planning Commission or City Council.
- (2) Request for an extension of time must be filed with the Planning Division at least 15 days prior to the anniversary date of approval, and action on the request shall be taken within 30 days. Notice of said action shall be given pursuant to Section 10-1.2820.
- (3) In making a decision on approval of an extension, the following shall be considered:
 - (a) the cause for delay in submittal of the administrative use permit; and
 - (b) whether the proposal is in conformance with existing development regulations.

SEC. 10-1.3360 REVOCATIONS.

In accord with the notice and hearing provisions detailed in Sections 10-1.2820 and 10-1.2825, the Planning Director may revoke a variance permit, modify or add to the conditions of approval thereto, or refer said matter to the Planning Commission with or without a recommendation, for failure to comply with or complete the conditions of approval or the improvements indicated on the approved plans.

SEC. 10-1.3365 REAPPLICATION.

A variance that has been disapproved may not be reapplied for within one year of the final decision to disapprove said application, except when the Planning Director finds that new evidence, a change of conditions, or a change in the project justifies reconsideration.

SEC. 10-1.3370 VARIANCES TO USES, DENSITY, AND GARAGE CONVERSIONS PROHIBITED.

- a. No nonconforming use of neighboring lands, structures, or buildings in the same zoning district, and no permitted or nonconforming use of lands, structures, or buildings in other zoning districts shall be considered grounds for the issuance of a variance.
- b. In no case may an application be accepted and/or a variance be granted to permit a use or density not permitted in the zoning district in which the subject property is located.
- c. In no case may an application be accepted and/or a variance be granted to allow physical changes in a garage which would result in the conversion of a garage to purposes other than for parking vehicles. A waiver may be made by the Planning Director for a physically handicapped person who resides in the single-family home when the property owner can establish that the terrain is such that there is no reasonable access to the living quarters

except through the garage portion of the residence. For purposes of this section, a waiver to allow accessibility for persons with physical disabilities to the dwelling by creating living quarters within the garage shall not be considered a garage conversion.

SEC. 10-1.3375 LIMITATION OF VARIANCE APPROVAL.

A variance approved to a required setback shall be valid only as it relates to the construction proposed at the time the variance approval was granted. Any future building addition that intrudes into a statutory setback shall not be authorized unless subsequent variance approval is obtained.